IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
Appeal No. 115 OF 2007
IN
Summons for Judgment No. 455 of 2006.
in
Summary Suit no. 790 of 2005

The Mahatma Gandhi Memorial
Employees Provident Fund Trust & ors. ... Appellants
vs.
Ketan Seth & Co. ... Respondents

Ms. S. V. Sonawane for appellants.
None for respondents.

CORAM: R.M.S. KHANDEPARKAR
AND
D. G. KARNIK JJ.

DATE: June , 8, 2007

P.C.:

1. Heard learned advocate for the appellant. None present for the respondent, though served.
2. Plain reading of the impugned order discloses that merely on account of failure to give inspection of the documents, the defendant has been granted unconditional leave to defend the suit. Mere failure on the part of the plaintiffs to give inspection of the documents cannot be a justification to grant unconditional leave to defend the suit by the defendant. Once the summons for judgment is issued, it is for the defendant to make out a case for grant of leave to defend. In case there is

any delay on the part of the plaintiffs to give inspection of the documents, certainly time can be granted, but that by itself cannot be a ground to defend the suit unconditionally.

3. Viewed from this angle, the impugned order cannot be sustained and is liable to be set aside and the matter to be remanded to the learned Single Judge to proceed with the matter in accordance with the provisions of law, after hearing the parties.

4. The appeal accordingly is allowed. The impugned order is hereby set aside and the matter is remanded to the learned Single Judge to proceed with the matter in accordance with the provisions of law, after hearing the parties. The plaintiffs shall give inspection of the documents to the defendant / respondent within 30 days and thereafter the matter to be heard by the learned Single Judge on the point of leave to defend the suit. No order as to costs.

(R.M.S. KHANDEPARKAR J.)

(D. G. KARNIK J.)